



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Jan Witold Baran
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006

JUL 10 2013

RE: MUR 6679
Congressional Leadership Fund
and Caleb Crosby in his official
capacity as treasurer

Dear Mr. Baran:

On November 7, 2012, the Federal Election Commission notified your clients, Congressional Leadership Fund and its treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On July 9, 2013, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that Congressional Leadership Fund and Caleb Crosby in his official capacity as treasurer violated 2 U.S.C. § 441a(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Mark Allen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg".

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

RESPONDENTS: Jim Renacci for Congress and Russell Corwin
in his official capacity as treasurer¹
Congressional Leadership Fund and Caleb Crosby
in his official capacity as treasurer²

MUR 6679

FACTUAL AND LEGAL ANALYSIS

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Chris Redfern of the Ohio Democratic Party, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Respondents.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

The Complaint in this matter alleges that the Congressional Leadership Fund (the "Fund"), an independent expenditure-only political committee, coordinated its television advertisement purchases with Jim Renacci for Congress ("Renacci Committee") in violation of the Act.

According to the Complaint, on October 23, 2012, the Renacci Committee cancelled \$850,000 worth of broadcast television advertising reservations through election day, even though the Committee had ample money on hand for the reserved ads. See Compl. at 1 (Oct. 31, 2012). The next day, the Complaint alleges, the Fund "mov[ed] to replace the cancelled ad buys" with \$300,000 worth of new ads attacking Renacci's election opponent, Betty Sutton. *Id.* The Complaint concludes that the "seamlessly

¹ On December 19, 2012, Renacci for Congress amended its Statement of Organization to name Corwin as treasurer.

² On December 4, 2012, the Congressional Leadership Fund amended its Statement of Organization to name Crosby as treasurer.

1 speedy manner” in which the Renacci Committee’s ads were replaced by ads purchased
2 by the Fund demonstrates that the Committee and the Fund were “materially involved”
3 with each other’s ad timing, intended audience, and means of communication. *Id.*

4 Respondents deny the coordination allegation. The Fund’s response rests on
5 sworn statements of its president and its media vendor.

6 Based on its review of the record, the Commission finds no reason to believe that
7 Respondents violated the Act and closes the file.

8 **B. Factual Summary**

9 The Renacci Committee is the principal campaign committee for Representative
10 James B. Renacci, a 2012 candidate in Ohio’s 16th Congressional District. Renacci’s
11 opponent was Betty Sutton. The Fund registered with the Commission as an independent
12 expenditure-only political committee on October 24, 2011,³ and has filed regular
13 disclosure reports and independent expenditure notices since that date.

14 Over \$11 million in independent expenditures was spent in connection with this
15 race, including \$2,743,676.60 by the Fund, in opposition to Sutton, as follows:⁴

³ See <http://images.nictusa.com/pdf/996/11030681996/11030681996.pdf>.

⁴ The list is drawn from Schedule E of the Fund’s disclosure reports.

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| <u>Amount</u> | <u>Date</u> |
|---------------|-------------|
| \$442,532.00 | 09/14/2012 |
| \$ 99,975.00 | 09/14/2012 |
| \$ 15,000.00 | 09/14/2012 |
| \$ 15,000.00 | 09/21/2012 |
| \$442,112.00 | 09/21/2012 |
| \$601,854.00 | 10/22/2012 |
| \$115,000.00 | 10/22/2012 |
| \$ 15,000.00 | 10/22/2012 |
| \$630,124.00 | 10/25/2012 |
| \$264,058.00 | 10/29/2012 |
| \$ 15,000.00 | 10/29/2012 |
| \$ 88,021.60 | 11/02/2012 |

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2 The Renacci Committee raised and spent over \$3.3 million.

3 The Renacci Committee denies the Complaint's underlying factual assertions and
4 claims that:

- 5 • The Renacci Committee made its initial reservation of broadcast advertising
6 points—not an actual purchase of advertising time—in the Cleveland media
7 market in April 2012 for the 2012 general election, with the full understanding
8 that the decision on how and when to air these points would be subject to change
9 as the election approached.
- 10
- 11 • In August 2012, the Renacci Committee made a strategic decision to air
12 advertisements earlier than it had anticipated. Consequently, many of the
13 broadcast points that the Renacci Committee had initially reserved for the final
14 weeks of the campaign were pushed forward as the Renacci Committee began
15 purchasing air time in August.
- 16
- 17 • At no point had the Renacci Committee reserved \$850,000 in advertising for the
18 final two weeks of the campaign as alleged. The Renacci Committee had
19 reserved approximately \$900,000 worth of ad time over the final four weeks of
20 the campaign. The initial reservation for the final two weeks amounted to
21 approximately \$450-\$500,000. But due to the Renacci Committee having spent
22 more on earlier advertising, the Committee spent only approximately \$200,000 on
23 television during the final two weeks,⁵ a decision based solely on the amount of
24 money that the Renacci Committee had left to spend.

⁵ The Renacci Committee disclosed \$191,230.84 in disbursements for television advertising on and after October 23, 2012. See Amended 2012 Post-General Report at 97, 98, 102, and 122 (filed Jan. 31, 2013).

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- The Renacci Committee did not have sufficient money on hand to fund the previously reserved ad buys; in fact, the candidate loaned \$100,000 to the Renacci Committee in the closing days of the race to finance the final broadcast television buy, a buy that the Complaint seems to suggest never occurred.

Renacci Committee Resp. at 1-3 (Nov. 20, 2012). The Renacci Committee also provided “network records” purporting to show that it began airing broadcast ads on August 27, 2012, and stayed on the air every week through the election. *See* Resp., Attach. The Renacci Committee’s response is unsworn.

The Fund also asserts in its response—with supporting affidavits—that ad buys shortly before the election resulted from strategic and budgetary considerations and *not* from any coordination with the Renacci Committee, and states as follows:

- On or about October 9, 2012, the Fund’s media vendor, American Media & Advocacy Group (“American Media”), reserved television advertising time from October 19 through November 6, 2012, for the Fund’s independent expenditures opposing Sutton. The amount and dates were based on internal budgetary and strategic considerations, which were informed by real-time advertising data provided by American Media, pursuant to its service agreement with the Fund.
- Relying upon American Media’s data, the Fund continued to monitor television advertising spending for and against Sutton and Renacci. According to these data, organizations supporting Sutton or opposing Renacci had purchased significant advertising time. As a result, on or about October 23, 2012, the Fund directed American Media to increase the Fund’s television advertising opposing Sutton by \$300,000.
- The Fund had already made substantial independent expenditures in connection with Renacci’s election. Prior to the \$300,000 increase on October 23, 2012, the Fund had spent \$2.4 million during September and October 2012.

Fund Resp. at 2-5 (Dec. 21, 2012). These assertions are based on sworn statements by American Media’s president, Robin D. Roberts, and the Fund’s president, Brian O. Walsh.

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1 Both affidavits specifically deny any coordinating activity between the Fund and
2 the Renacci Committee. Roberts states that he confirmed with the American Media
3 employees who provided services to the Fund (1) that they did not have any
4 communications with any candidate, candidate committee, or political party committee
5 regarding media-buying activities performed by American Media on behalf of the Fund
6 and (2) that American Media did not otherwise coordinate any services it provided to the
7 Fund with any candidate, candidate committee, or political party committee. Robin D.
8 Roberts Aff. ¶ 7 (Dec. 20, 2012). Roberts' affidavit states that American Media takes
9 strong measures to avoid coordination by, for example, vetting "new work engagements"
10 and separating personnel. *Id.* ¶¶ 5-6. Walsh, in his affidavit, avers that he is familiar
11 with the Commission's coordination regulations and that the Fund "did not rely on
12 information from the Renacci campaign that would have resulted in coordination
13 pursuant to these regulations." Brian O. Walsh Aff. ¶ 9 (Dec. 20, 2012).

14 The Fund also asserts that the Complaint does not describe or allege any conduct
15 that constitutes coordination. Fund Resp. at 5. The Fund contends that, even if true, the
16 basis for the Complaint—that the Fund increased its television advertising campaign soon
17 after the Renacci campaign decreased its television advertising—does not support the
18 Complaint's coordination claim. *Id.* at 7.

19 **C. Legal Analysis**

20 The issue here is whether the Fund made a coordinated communication, resulting
21 in an excessive in-kind contribution to the Renacci Committee. During the 2012 election
22 cycle, it was unlawful to make a contribution to a candidate and the candidate's
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1 authorized political committee with respect to any election for federal office that in the
2 aggregate exceeded \$2,500. 2 U.S.C. § 441a(a)(1)(A). The Act also provides that no
3 candidate or political committee may knowingly accept a contribution in violation of
4 section 441a. *Id.* § 441a(f). And a coordinated communication is considered an in-kind
5 contribution from the person to that candidate and is subject to the limits, prohibitions,
6 and reporting requirements of the Act. 11 C.F.R. § 109.21(b).

7 Under Commission regulations, a communication is coordinated with a candidate,
8 authorized committee, or an agent thereof if it meets a three-part test: (1) it is paid for by
9 a person other than the candidate or authorized committee; (2) it satisfies at least one of
10 five “content” standards in 11 C.F.R. § 109.21(c); and (3) it satisfies at least one of six
11 “conduct” standards in 11 C.F.R. § 109.21(d). 11 C.F.R. § 109.21(a).

12 In this matter, both the payment and content prongs are satisfied. The Fund paid
13 for the advertisements.⁶ See 11 C.F.R. § 109.21(a)(1). According to the Fund’s reports
14 to the Commission, these ads expressly advocated the defeat of Renacci’s opponent. See
15 *id.* § 109.21(c)(3); Fund 24-Hour Independent Expenditure Notices (Oct. 27 – Nov. 2,
16 2012).

17 The conduct prong, however, is not met. Commission regulations set forth six
18 types of conduct that satisfy the conduct standard: (1) request or suggestion; (2) material
19 involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and
20 (6) republication. 11 C.F.R. § 109.21(d).

⁶ The Fund’s ads were not individually identified in the Complaint, which referenced “the Congressional Leadership Fund’s latest ads.” See Compl. at 2. These ads appear to correspond to the Fund’s independent expenditures in opposition to Sutton disclosed on October 29 and November 2, 2012, totaling \$367,079.60. See *supra* chart of the Fund’s independent expenditures.

1 The material involvement standard is satisfied when a candidate or authorized
2 committee is materially involved in decisions regarding: (1) the content of the
3 communication; (2) the intended audience for the communication; (3) the means or mode
4 of the communication; (4) the specific media outlet used for the communication; (5) the
5 timing or frequency of the communication; or (6) the size or prominence of a printed
6 communication, or duration of a communication by means of broadcast, cable, or
7 satellite. 11 C.F.R. § 109.21(d)(2). The Commission has noted that coordinating
8 advertising schedules could satisfy the “material involvement” conduct standard. *See*
9 Coordinated Communications E&J, 68 Fed. Reg. 421, 434 (Jan. 3, 2003). This standard
10 is not satisfied, however, if the information material to the creation, production, or
11 distribution of the communication was obtained from a publicly available source.
12 11 C.F.R. § 109.21(d)(2).

13 The Complaint alleges that the Fund and the Renacci Committee were “materially
14 involved” with each other’s television ad timing, intended audience, and means of
15 communication. The Complaint draws this inference of coordination based solely on the
16 asserted changes in Respondents’ ad buys. The Complaint argues that Respondents
17 “must have been ‘materially involved’” with one another’s decision-making “[d]ue to the
18 seamlessly speedy manner in which Renacci’s ads were replaced in less than 24 hours.”
19 Compl. at 2. The Complaint describes the timing as “extremely odd,” which “smacks of
20 more than just coincidence” and therefore “leads [Complainant] to believe that there was
21 coordination” between the Renacci Committee and the Fund. *Id.*

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1 The inference, however, is not supported by any available information. To the
2 contrary, the available information refutes the Complaint's assertion that the Renacci
3 Committee was "materially involved" in the Fund's decision to purchase additional
4 advertising. *See* 11 C.F.R. § 109.21(d)(2).

5 The Fund provides a sworn affidavit saying that it decided to increase its
6 advertising based on commercially available data showing that organizations supporting
7 Sutton or opposing Renacci had purchased significant television advertising time.⁷ Fund
8 Resp. at 7; Walsh Aff. ¶¶ 7-8. According to the Fund, "some time on or about
9 October 23, [it] directed [American Media] to purchase an additional \$300,000 in
10 television advertising." Fund Resp., Walsh Aff. ¶ 8. Further, the Renacci Committee's
11 response, although unsworn, provides details about its decisions concerning its
12 advertising purchases that undercut the Complaint's surmise that the Fund's payment was
13 "more than just coincidence." Accordingly, there is no reason to conclude that the
14 material involvement standard is met in this matter.⁸

15 In sum, it does not appear that the Fund coordinated its communications with and
16 thereby made an in-kind contribution to the Renacci Committee. Thus, the Commission
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⁷ Independent expenditures opposed to Renacci between October 23 and the November 6, 2012, election total over \$2.4 million for "television advertising" and "media buy[s]." The Commission's database does not show any independent expenditures during this period for these purposes in support of Sutton.

⁸ Neither does the available information meet any other conduct standards. For example, the Renacci Committee did not make any disbursements to the Fund's media vendors including American Media. *See* 11 C.F.R. § 109.21(d)(4) (common vendor conduct standard). And the Fund's ads, all of which attack Sutton for voting with Nancy Pelosi and do not mention Renacci, are dissimilar to Renacci Committee ads, which make no mention of Pelosi. *See* <http://www.congressionalleadershipfund.org/ads/>, <http://www.renacciforcongress.com/blog/blog.aspx?Month=10&Year=2012>. *See id.* § 109.21(d)(6) (republishment conduct standard).

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- 1 finds no reason to believe that the Fund violated 2 U.S.C. § 441a(a) by making excessive
- 2 contributions and finds no reason to believe that the Renacci Committee violated
- 3 2 U.S.C. § 441a(f) by accepting excessive contributions.

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